

ORIGINAL

KOBAYASHI, SUGITA & GODA

LEX R. SMITH 3485-0

THOMAS H. YEE 7344-0

First Hawaiian Center

999 Bishop Street, Suite 2600

Honolulu, Hawaii 96813

Telephone No. (808) 539-8700

Facsimile No. (808) 539-8799

Email: lrs@ksglaw.com

KIRKLAND & ELLIS LLP

Michael E. Baumann (CA Bar No. 145830)

Damian Capozzola (CA Bar No. 186412)

R. Olivia Samad (CA Bar No. 228611)

777 South Figueroa Street

Los Angeles, CA 90017

Telephone No. (213) 680-8400

Facsimile No. (213) 680-8500

Email: eliebeler@kirkland.com

Attorneys for Defendant

POST-CONFIRMATION TRUST

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;

Plaintiff,

vs.

HAWAIIAN EXPRESS SERVICE,
INC., et al.,

Defendants.

) CIVIL NO. CV03-00385 SOM-LEK

) (Copyright)

)

) **PCT'S THIRD AMENDED EXHIBIT**

) **LIST**

)

) Judge: Hon. Susan O. Mollway

) Trial Date: February 28, 2006

) Time: 9:00 a.m.

)

In accordance with Magistrate Kobayashi's April 29, 2005 Amended Rule 16 Scheduling Order, and the Honorable Susan O. Mollway's further order at the hearing on January 24, 2006 regarding the exchange of supplemental exhibits, Fleming exchanges the following categories of pre-marked exhibits to be offered, other than for impeachment or rebuttal, and demonstrative aids potentially to be used at trial. The PCT lists these items for disclosure and compliance purposes only and by listing them in no way endorses the admissibility of each and every one, or the admissibility of the entirety of any one.

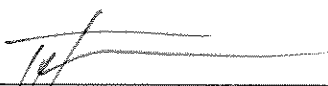
200. November 19, 1999 e-mail from Dave Badten to Mark Dillon (J 00256-00257) (Prepetition Trial Ex. 14).
201. Fleming period calendar (PCT-B 377-379).
202. Fleming 2003 Period 4 Financial Information (PCT-B 315-376).
203. Fleming 2003 Period 5 Financial Information (PCT-B 251-314).
204. Fleming 2003 Period 6 Financial Information (PCT-B 187-250).
205. Fleming 2003 Period 7 Financial Information (PCT-B 124-186).
206. Fleming 2003 Period 8 Financial Information (PCT-B 060-123).
207. Fleming 2003 Period 9 Financial Information (PCT-B 001-059).
208. Email from Wayne Berry to Brian Marting dated June 6, 2002 attaching letter re Freight Control System (Marting Dep. Ex. 8).
209. Letter to Brian Marting from Wayne Berry dated April 14, 2005 re Agreements (Marting Dep. Ex. 28).
210. Service Agreement dated May 7, 2003 (Marting Dep. Ex. 31).
211. Software End User License Agreement dated May 7, 2003 (Marting Dep. Ex. 35).

212. Invoice No. Y-1001 from Wayne Berry to Y-N, Inc. dated May 8, 2003 in the amount of \$8,736.00 (Marting Dep. Ex. 42).
213. Invoice Nos. Y-1002 - Y-1012 from Wayne Berry to Y-N, Inc. dated June 8, 2003 to April 8, 2004 in the amount of \$8,736.00 (Marting Dep. Ex. 43).
214. Invoice Nos. Y-1013 to Y-1024 from Wayne Berry to Y. Hata & Company, Ltd. in the amount of \$8,736.00 (Marting Dep. Ex. 44).
215. Invoice No. Y-1025 from Wayne Berry to Y. Hata & Company, Ltd. dated April 8, 2005 in the amount of \$31,200.00 (Marting Dep. Ex. 45).
216. October 7, 1999 Settlement and Release Agreement re API. (E 006-017)
217. October 19, 1999 Copyright registration (Prepetition Trial Ex. 69).
218. September 1, 1999 letter from Wayne Berry. (E 002-003)
219. Powerpoint with screenshots of FCS (Prepetition Trial Ex. 12)
220. November 3, 1999 letter from Wayne Berry to Ralph Stussi (Prepetition Trial Ex. 61).
221. Wayne Berry's December 6, 2004 responses to Fleming's First Request for Production of Documents.
222. Wayne Berry's March 22, 2005 responses to Fleming's First Request for Answers to Interrogatories.
223. Wayne Berry's April 22, 2005 responses to Fleming's Second Set of Interrogatories.
224. October 9, 1999 API Asset Purchase Agreement (Prepetition Trial Ex. 217).
225. October 19, 1999 copyright filing (Prepetition Trial Ex. 221).
226. Hours Required to Make Allegedly Unauthorized Modifications (Ex. 3 of the June 16, 2005 report of Jeffrey H. Kinrich).
227. Actual Damages Suffered Due to Alleged Infringement (Ex. 4 of the June 16, 2005 report of Jeffrey H. Kinrich).

- 228. Fleming Hawaii Financial Performance (Ex. 5 of the June 16, 2005 report of Jeffrey H. Kinrich).
- 229. Powerpoint presentation on Microsoft Access, prepared by Martin G. Walker.
- 230. Powerpoint presentation comparing various iterations of FCS 1993, prepared by Martin G. Walker.
- 231. Powerpoint presentation on damages, prepared by Jeffrey H. Kinrich.
- 232. Supplemental Powerpoint presentation prepared by Jeffrey H. Kinrich.
- 233. Memorandum dated November 24, 1999 to Wayne Berry from Ralph Stussi. *3/1/06 W Berry*
- 234. Fleming Hawaii Logistics Department Financial Performance April 1, 2003-June 9, 2003.
- 235. Fleming Hawaii's Performance Improved After Use of FCS Ceased.
- 236. Is Mr. Ueno's "License Fee" Reasonable?

Dated: Honolulu, Hawaii, March 2, 2006.

237
KOBAYASHI, SUGITA & GODA

3/2/06 A. Chiu


LEX R. SMITH
THOMAS H. YEE

KIRKLAND & ELLIS LLP

ERIC C. LIEBELER
DAMIAN CAPOZZOLA
R. OLIVIA SAMAD

Attorneys for Defendant
POST CONFIRMATION TRUST